

1 JUDGE SIPPEL: Okay, the reporter will so mark that
2 when she receives the copies.

3 (Whereupon, the document referred to
4 as Four Jacks Exhibit No. 10 was
5 marked for identification.)

6 BY MS. SCHMELTZER:

7 Q And if you will look on the program log, it's page
8 2, Ms. Barr, at 8 p.m., the source is N. That's network?

9 A That's correct.

10 Q And the type is E, and that's entertainment. Is
11 that correct?

12 A It does say E, yes.

13 Q Okay. Do you have any reason to believe that this
14 log is wrong?

15 A No, I do not.

16 Q In terms of calculating either your news or your
17 public affairs programs, did you consider the program "Turn It
18 Up"? Did you include that program?

19 A That was considered a public affairs program.

20 Q "Turn It Up" was considered a public affairs -- What
21 did you base your decision to -- On what did you base your
22 decision to include "Turn It Up" as a public affairs program?

23 A "Turn It Up" was a locally produced program that was
24 created by and produced by one of our news photographers, an
25 African-American news photographer, who had come up with the

1 idea as a way of highlighting some of the musical talents of
2 local teenagers. And it was also a program that helped
3 generate some greater self esteem among young African-American
4 teenagers.

5 Q This program had a music component. Is that
6 correct?

7 A It had a music component, yes.

8 MS. SCHMELTZER: I'd like to have marked for
9 identification as Four Jacks Exhibit 11 a copy of a daily -- a
10 two-page document. It's the WMAR-TV daily performance report
11 dated Saturday, June 15, 1991, and the second page is the
12 station log.

13 JUDGE SIPPEL: Okay, the reporter will so mark that
14 as Four Jacks Exhibit 11 for identification.

15 (Whereupon, the document referred to
16 as Four Jacks Exhibit No. 11 was
17 marked for identification.)

18 BY MS. SCHMELTZER:

19 Q Ms. Barr, if you'll turn to page 2 at 11:30 a.m., do
20 you see the program "Turn It Up"?

21 A Yes.

22 Q Now, the source there is R. Is that recorded?

23 A Yes.

24 Q And the next -- the type is listed as E. Is that
25 entertainment?

1 A It does say E, yes.

2 Q And was that program normally logged entertainment,
3 to your knowledge?

4 A It was on this date.

5 Q Do you have any reason to believe that the logging
6 was wrong?

7 A No, I do not.

8 MS. SCHMELTZER: Your Honor, if, if you want to
9 break at this point, that would be fine. And then we'll
10 continue on.

11 JUDGE SIPPEL: Is this all that you're going to
12 introduce on this?

13 MS. SCHMELTZER: I would like to move -- I would
14 like to ask that these exhibits be received into evidence, and
15 that's Exhibit 7 through 11.

16 JUDGE SIPPEL: Is there any objection? Hearing
17 none, they're received into evidence at this time as Exhibits
18 7 through 11 as identified.

19 (Whereupon, the documents referred to
20 as Four Jacks Exhibit No. 7 through
21 11 were received into evidence.)

22 JUDGE SIPPEL: We're in recess for lunch until 25
23 after 1. I want to instruct the witness that you're not to
24 talk to your -- about your testimony with any of the other
25 prospective witnesses in this case. We're in recess till 25

1 after 1.

2 (Whereupon, at 12:08 p.m., a luncheon recess was
3 taken until 1:25 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 JUDGE SIPPEL: We're on the record. Ms. Barr,
3 you're still under oath. Do you understand that?

4 THE WITNESS: Yes, I do.

5 MS. SCHMELTZER: Your Honor, would this be an
6 appropriate place to have identified and received Four Jacks
7 Exhibit 5?

8 JUDGE SIPPEL: In a moment it would be. But you're
9 finished with this line of cross examination, I take it, with
10 respect to the logs?

11 MS. SCHMELTZER: Yes. Yes. Had you ruled on those
12 --

13 JUDGE SIPPEL: They're in. Yes. On the receipt of
14 those into evidence?

15 MS. SCHMELTZER: Yes.

16 JUDGE SIPPEL: Yes, they've been, they've been moved
17 and received in, into evidence. But I have reflected over
18 lunch time and in order to keep your testimony in, in sequence
19 I want to clear up this particular area of the logs right now.
20 I've, I've considered whether to offer Scripps Howard the
21 opportunity to, to redirect in an area that you testified to,
22 but on reflection I think it would be more appropriate to
23 simply ask you, you, Ms. Barr, you did indicate that you did
24 want to qualify some of your language with respect to these
25 logs. And if you care to do that now, I'll permit you to say

1 | what you wish to say.

2 | THE WITNESS: Thank you. What I was trying to say
3 | before was that in, in referencing the programming that we
4 | considered to be news and public affairs one of the criterion
5 | we -- that I used was whether or not the program was produced
6 | by the NBC News Division, because NBC is divided into two
7 | divisions, NBC News and NBC Entertainment. NBC News produces
8 | certain programming, programming such as "Real Life with Jane
9 | Pauley", "The Today Show", Exposé", programs --

10 | It was my judgment and experience in prior
11 | television stations and in the industry in general to
12 | determine whether or not those programs would in fact -- could
13 | be constituted as news. And that is how we -- that's how I
14 | chose to arrive at including those programs in that figure,
15 | that ultimate 35 percent figure.

16 | JUDGE SIPPEL: All right. So you made an
17 | independent judgment on your own. I mean, when I say
18 | independent, I mean aside from whatever might be reflected in
19 | the logs.

20 | THE WITNESS: Right. Since I didn't use the program
21 | logs to determine whether the programs were logged as -- As I
22 | said earlier, I did not use the program logs at all in
23 | calculating that 35 percent number. I used the program
24 | schedule. The determination as to whether a program was news
25 | or not news in that sense was then based on whether the

1 program was produced by NBC News. But I do so conservatively
2 because in one instance I took a program that was produced by
3 NBC News, "A Closer Look," which airs at that time at
4 12:30 p.m. on weekdays, and I excluded that program, because
5 in my opinion that program was more of a talk show and less of
6 a news show.

7 So I tried to conservatively estimate what programs
8 would be -- could be considered news.

9 JUDGE SIPPEL: What program was that that you --

10 THE WITNESS: It was called "A Closer Look" and it
11 was a half-hour program that aired at 12:30 Monday through
12 Friday.

13 JUDGE SIPPEL: Okay. Did you want to cross examine
14 in that -- on, on this particular testimony, Ms. Schmeltzer?

15 BY MS. SCHMELTZER:

16 Q Did you contact anyone at NBC with respect to the
17 logging of these programs?

18 JUDGE SIPPEL: Wait a minute. I don't think she
19 testified as to logging.

20 THE WITNESS: Right.

21 BY MS. SCHMELTZER:

22 Q Well, did you contact anyone at NBC with respect to
23 your characterization of these programs as news?

24 A I, I checked to see if NBC News produced certain
25 programs.

1 Q But you didn't call anyone in NBC to see if it would
2 be appropriate for you to consider these programs as news, did
3 you?

4 A No. I made that judgment based on whether or not
5 the program was in fact produced by NBC News.

6 Q And when you say produced by NBC News, what showed
7 you that it was produced by NBC News?

8 A That is what I verified with people from NBC.

9 Q So you verified with someone at NBC that it was
10 produced by NBC News, but you didn't ask them whether it was
11 appropriate to categorize it as news?

12 A Generally speaking, when NBC News produces a
13 program, it is because it is, it is largely of news content.
14 That is why it is produced by the News Division.

15 Q But my question is --

16 JUDGE SIPPPEL: Listen to her question.

17 BY MS. SCHMELTZER:

18 Q My question is did you ask NBC if it would be
19 appropriate to characterize this program as news for logging
20 purposes?

21 A No, I did not.

22 Q Did you consider asking the FCC for a declaratory
23 ruling as to what this program should be considered?

24 A No, I did not.

25 MS. SCHMELTZER: I have nothing further on that

1 line, Your Honor.

2 JUDGE SIPPEL: All right. You raised the question
3 of the -- Does that complete everything that you wanted to say
4 at this time --

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: -- about that subject?

7 THE WITNESS: Yes, it does. Thank you.

8 JUDGE SIPPEL: Now, we have the correspondence that
9 you were referring to, Ms. Schmeltzer was referring to.

10 MS. SCHMELTZER: Yes. We would like to now have
11 marked for identification as Four Jacks Exhibit 5 a document
12 entitled "Letters of Criticism and Complaints from The Public
13 Regarding WMAR-TV." This is a 106-page exhibit and I'm
14 handing an original and one copy to the reporter. And this
15 has been previously exchanged.

16 JUDGE SIPPEL: The reporter will so mark that
17 document as Four Jacks Exhibit 5 for identification.

18 (Whereupon, the document referred to
19 as Four Jacks Exhibit No. 5 was
20 marked for identification.)

21 MS. SCHMELTZER: And I would ask that that be
22 received in evidence.

23 JUDGE SIPPEL: Mr. Howard?

24 MR. HOWARD: Objection, Your Honor. The -- Many of
25 the letters here are not -- there's no foundation for

1 asserting that these letters are negative letters with
2 negative impact on the reputation of WMAR and the community.
3 And, therefore, they're immaterial to the matter at hand.

4 JUDGE SIPPEL: They're not relevant?

5 MR. HOWARD: The letters -- They're not relevant or
6 material. They're not -- They don't prove anything.

7 JUDGE SIPPEL: Well, now, you introduced
8 considerable numbers of letters that, that you contend were
9 favorable to the station.

10 MR. HOWARD: Yes, Your Honor. I think in terms of a
11 favorable comment about the station tends to support the view
12 that the letter writer had a favorable view of the station,
13 and which we'd be, we'd be subject to questioning of whether
14 or not those letters in fact went to that purpose. That would
15 be an appropriate line of inquiry for us, as well as for them,
16 as to whether or not the, the letters that we introduced
17 support a finding that the station had a positive reputation
18 in the community.

19 But here, for example, many of these letters have to
20 do with the cancellation of "Santa Barbara". It's a soap
21 opera that was carried by the station and cancelled in favor
22 of a program that starred a, an African-American male on a
23 talk show that often introduced issues of, of importance for
24 discussion. Thus, to say that those letters should be then
25 put in in evidence about an adverse impact on station WMAR's

1 | renewal does not follow as a matter of logic.

2 | JUDGE SIPPEL: Well, but you'd be in a position with
3 | these letters in the record -- And these were all letters that
4 | came, as I understand, from the same file of Scripps Howard.

5 | MR. HOWARD: That's correct, Your Honor.

6 | JUDGE SIPPEL: And if -- You would be in a position
7 | to make that point in your proposed findings or in your --
8 | rather, in your reply findings when you see how they use them.
9 | I don't see how you'd be prejudiced. In fact, the example
10 | that you give to me sounds like you say your position would be
11 | enhanced.

12 | MR. HOWARD: Yes, Your Honor, but we think that
13 | the -- that the burden should initially be on Four Jacks to
14 | show that these serve some purpose to this hearing. And,
15 | thus, there should be -- They've just lumped in these records.
16 | There should be a, a, a showing or some support on their part
17 | that these are in fact -- They're just, they're just -- The,
18 | the phrase they used was "critical and complaints." That
19 | doesn't -- They should make a showing that that goes to
20 | reputation. Or at least make that allegation before it can go
21 | into evidence.

22 | They haven't yet supported these with the assertion
23 | that they reflect adversely on the station's reputation in the
24 | community.

25 | JUDGE SIPPEL: Well, well, that's -- We can, we can

1 get their position in that -- to that extent right now.

2 MS. SCHMELTZER: Well --

3 JUDGE SIPPEL: What are you proffering with respect
4 to those letters?

5 MS. SCHMELTZER: Mr. Howard has introduced half of a
6 bunch of letters that were all in the same file. Mr. Howard
7 has just selectively taken certain letters and those have been
8 submitted as Attachment R to Ms. Barr's testimony. They admit
9 that the station also received letters offering criticisms and
10 complaints -- That's on SH3-62 -- but they did not submit any
11 of those letters. And the purpose of our exhibit is to make
12 the record complete, to submit what was omitted.

13 And under the Federal Rules of Evidence, we're
14 entitled to do that. If someone offers part of a document or
15 part of a file, we're entitled to submit the rest of it. We
16 think this is just as relevant to the station's programming as
17 the letters that Mr. Howard submitted.

18 JUDGE SIPPEL: Well, are you contending that in each
19 of these letters is, is, is negative in the sense of the
20 company's -- Scripps Howard's reputation with respect to this
21 broadcasting?

22 MS. SCHMELTZER: These are letters that are not
23 totally favorable to the station, that criticize certain
24 things that the station did.

25 MR. HOWARD: And our position is that the record

1 | should reflect only those matters that go to the weight of the
2 | evidence at issue -- that weigh on the issue of this
3 | proceeding.

4 | MS. SCHMELTZER: Well, these do weigh on the issue
5 | of this proceeding.

6 | JUDGE SIPPEL: Yeah, I, I, I'm going to -- Just a
7 | minute, Mr. Zauner. I will get to you. The general
8 | reputation of the station with respect to its broadcast -- The
9 | review board I think has, as, as I recently read it, gives a
10 | very broad approach to this kind of evidence. Although this
11 | might not be the, the, the most probative of the, of the
12 | renewal type evidence, it's definitely -- it's there. And
13 | that Ms. Schmeltzer is saying is that she's found documents in
14 | the same category, in the same file, in fact, that counter
15 | with, with your proposition, that proposition that you would
16 | be advancing.

17 | So it's the weight. It's just a question of
18 | weighing one versus the other.

19 | MR. HOWARD: Except for the fact that she is not
20 | saying that they counter it. She has not yet made that
21 | allegation. Just because it's critical of some program that
22 | the station aired, for example, the pre-emption of the local
23 | program by an Orioles game, that does not in any way, shape or
24 | form weigh on the reputation of the -- at least -- And it's
25 | certainly not obvious that it does to, to me, and it seems

1 that it should be -- For them to offer them in, in evidence,
2 they should take the position on the record that these -- not
3 just that they're critical of the station's performance, but
4 that they go against the, the station's reputation.

5 Thus, when it comes to cross examination, one
6 question we've got is to whom -- who are we going to be able
7 to address on cross examination the intention in offering
8 this, this exhibit? Is it, is it offered to, to cross examine
9 Ms. Barr? If they want to, to come in and use this as
10 rebuttal to her testimony, a particular letter, and say
11 doesn't this say that, I can understand that being relevant.
12 But to offer them in in bulk when -- without even anybody
13 asserting that they're in the balance having a negative
14 effect, seems to me to be immaterial to the proceedings.

15 JUDGE SIPPEL: Well, I, I hear what you're saying.
16 I, I don't mean, I don't mean to cut you off, but this is
17 where the, the relevancy and how evidence like this hearsay
18 evidence like this is handled in an administrative proceeding.
19 It does differ from, from a, from a court proceeding. And,
20 again, it's -- Well, before I go down the line with this, let
21 me ask Mr. Zauner what his position is.

22 MR. ZAUNER: Your Honor, I am in agreement that,
23 that these letters are irrelevant. I think they're irrelevant
24 for, for the simple reason that they do not deal with the
25 public affairs programming of this station, and that's what's

1 at issue, not the entertainment programming. Now, a number of
2 letters were allowed in that were submitted by Mr. Howard's
3 client, but in those -- Those letters dealt with the public
4 affairs programming of the station.

5 For example, I just happened to open this up and I'm
6 looking at their Tab R, SH3-0993, which talks about a
7 humanitarian award dinner. A couple of pages later I notice
8 something from the American Lung Association, a few pages
9 later the American Heart Association, and various
10 organizations and, and letters dealing with the public service
11 programming of the station. That is relevant. The fact that
12 the station has changed an announcer, the fact that the
13 station has dropped one entertainment programming and --
14 program and substituted another is not relevant because it has
15 nothing to do with the public affairs programming of the
16 station.

17 And all of these letter, that I can see, deal with
18 something that is totally irrelevant to the determination that
19 we have to make in this proceeding, and that is whether this
20 station presented programming that was responsive to the needs
21 and interests of the Baltimore community.

22 MS. SCHMELTZER: Your Honor --

23 JUDGE SIPPEL: Your letters are all that way?

24 MR. HOWARD: I, I don't recall exactly, but that's
25 the bulk of them, yes, Your Honor.

1 JUDGE SIPPEL: I mean, that's what they were
2 selected for, that purpose? To show favorable reaction from
3 the community with respect to your public service?

4 MS. SCHMELTZER: Your Honor --

5 MR. HOWARD: There are letters in here that I recall
6 would not make that strong a -- that case, but the -- I'm not
7 -- I don't recall, but they were not objected to on the
8 grounds that they, that they, that they did go to -- narrowly
9 to a particular action of an individual at the station who
10 helped someone. But to that extent, they do reflect favorably
11 on the station's actions in serving the community.

12 MS. SCHMELTZER: Your Honor, the exhibit, SH3-62,
13 Ms. Barr's testimony, says "WMAR-TV received letters during
14 the license term praising its programming and public service,
15 and the public service of the station and its staff." So a
16 lot of these letters do go to programming. Moreover, we
17 objected to Attachment R. We said it was a irrelevant because
18 it didn't establish community reputation. We were overruled
19 on that.

20 If these letters are relevant, then our letters are relevant.

21 JUDGE SIPPEL: Well, you don't agree with that, I
22 know.

23 MR. ZAUNER: Your Honor --

24 JUDGE SIPPEL: Short of doing a line-by-line
25 analysis or a letter-by-letter comparative analysis, do you

1 have anything more to say about -- I mean, my problem is --
2 with what you're saying is is that I don't think that it's
3 going to -- that, that these letters are going to line up
4 quite that way.

5 MR. ZAUNER: Your Honor, the next step would be if
6 you wanted -- I'm prepared right now to begin with letter one.

7 MS. SCHMELTZER: That's a waste of time.

8 JUDGE SIPPEL: No, I'm not going to do that.

9 MR. ZAUNER: Well, you asked me whether I wanted a
10 line-by-line analysis, and I'm going to --

11 MS. SCHMELTZER: Waste of time.

12 MR. ZAUNER: And my opinion is that all of the
13 letters that I can recall having read deal with the
14 entertainment programming aspect of the station.
15 Ms. Schmeltzer can correct me on that and show me one that
16 doesn't, or several.

17 JUDGE SIPPEL: Well, what I'm going to do is I'm
18 going to reserve my ruling on it. I'll take a look at the
19 letters when I'm not in court and I'll let you know when I'm
20 ready to make the decision. I want to go back and take a look
21 at this situation in October and how I did -- what the
22 objections were that were made to the Scripps Howard letters
23 and how I handled that, too, because I want to be -- I want to
24 give both sides as much of the same -- bite of the same apple
25 as I possibly can on something like this which is evidence.

1 I also want to take a look at what the review board
2 did say about reputation evidence with respect to this, this,
3 this type of documentation. All right, I'm reserving on that.

4 MS. SCHMELTZER: And I take it that you will review
5 Attachment R to Scripps Howard's exhibits, as well, in that
6 connection since these are related?

7 JUDGE SIPPEL: I'm going to, I'm going to -- Yeah,
8 whatever their counterpart is to the letters, I'm going to
9 spot check theirs. I'm going to spot check yours. I'm going
10 to look and see what the transcript says in October about
11 how -- what's been my reason for ruling as I did, what your
12 objection was, and I will look at what the review board has
13 recently said about this kind of evidence, and then make a
14 determination.

15 MS. SCHMELTZER: Does that -- Can I cross examine
16 Ms. Barr on some of the letters that they have in in
17 Attachment R?

18 JUDGE SIPPEL: That they have in?

19 MS. SCHMELTZER: They have in already.

20 JUDGE SIPPEL: Oh, surely. But, but she's not going
21 to --

22 MS. SCHMELTZER: But not on ours?

23 JUDGE SIPPEL: Well, no, not on yours. Now, did you
24 intend to cross examine her on, on letters that were in your
25 Exhibit 5?

1 MS. SCHMELTZER: Not necessarily. Not necessarily.

2 JUDGE SIPPEL: I didn't -- Well, as I said, as I, as
3 I understood the purpose of these correspondence evidence, as
4 we started handling this back in October, was that it was
5 going to, it was going to come in and it would be in the
6 record and it would be commented upon in findings. Since we
7 don't have the writers of the letters here, you know, this
8 really is not, it seems to me, much grist for cross
9 examination.

10 MS. SCHMELTZER: Well, similarly, I mean, this is
11 such a minor point in the overall scheme of things that I just
12 think all these should come in and we can argue the weight of
13 the evidence.

14 JUDGE SIPPEL: Well, I understand what you want and
15 I understand what your thinking is, but I've told you how I'm
16 going to approach it.

17 MS. SCHMELTZER: Okay.

18 JUDGE SIPPEL: All right. Then Exhibit 5, I'm
19 reserving ruling on Exhibit 5, but it has been identified as
20 your proposed Exhibit 5. And I'm also going to say no matter
21 how I rule on this, if I do receive some or all of Exhibit 5,
22 I'm not going to accept the -- as a conclusion that these are
23 letters of criticism and complaint. I'll make that conclusion
24 myself. I, I mean, I, I, you know, prefer to see a little
25 different title than that, but I can, you know, I can, I can

1 handle it. But I, I want Scripps Howard to know that I'm not
2 convinced that those are letters of criticism and complaint.

3 And as I -- I, I do remember this one instruction
4 when we talked about these letters, and that is that I'm
5 expecting if we go down to findings with, with a considerable
6 amount of these that they're going to be done in some kind of
7 a graph or chart form so that I'm told exactly what part of
8 what letter it is that is either a plus or a minus, and not
9 just have these things generally referred to and support some
10 broad proposition. But again, the, the transcript will speak
11 for itself on that.

12 All right, I have one other thing that I am
13 concerned about, and then we'll go on with Ms. Barr's cross
14 examination, and that is I have gone back and looked at my
15 ruling on discovery with respect to letters of, of -- adverse
16 letters from the FCC. And I'm referring to a ruling of mine
17 back in June of 1993 where I didn't focus -- I will concede I
18 did not focus the right way on what was being asked, and I
19 think this is going to be cleared up very readily because I
20 want to raise it right now. Four Jacks had asked for -- Yes,
21 Four Jacks had asked for documents reflecting or relating to
22 the notices of violation, forfeiture, letters of admonishment,
23 etcetera, from the FCC which relate to the station during the
24 relevant period.

25 And the relevant period is defined as that period

1 from May to September of 1991. So it is not an extensive
2 period of time. The response from Scripps Howard was that
3 although no such documents exist, there was an objection
4 because there was no specific issue added. And I, I, I, I
5 really, I bought that argument and, on reflection, after
6 reading the five criteria of Metro -- Was it Metroplex? -- one
7 of the, one of the specific criteria that I have to determine
8 as a finding of fact is, you know, whether or not -- the
9 nature of the licensee's record of compliance with the
10 Communications Act and FCC rules and policies, which of course
11 would bring that right into focus, without -- even without
12 there being a specific issue.

13 And I want to get it clear on the record from one of
14 your witnesses that there actually has been a search for that
15 information and that it does not exist. Now, you -- I don't
16 care who -- which witness you want to elicit that from.

17 MR. HOWARD: We discussed it, discussed it with this
18 witness, Your Honor, so fine, if you want to ask this witness.

19 JUDGE SIPPEL: Do you want to pursue -- Do you
20 want -- Do you have any other remedy that you had in mind on
21 this or you would have in mind, Ms. Schmeltzer?

22 MS. SCHMELTZER: Well, no, except just that if there
23 are documents we haven't seen them.

24 JUDGE SIPPEL: I understand that. I understand
25 that. But is there any more certain way that you would want

1 to go about looking for this information --

2 MS. SCHMELTZER: The only other way --

3 JUDGE SIPPEL: -- than my asking?

4 MS. SCHMELTZER: Well, the only other way I could go
5 about it is doing a full-scale search of various divisions of
6 the FCC, which is not necessarily probative 'cause sometimes
7 the field office does something and the office here in
8 Washington does not have it.

9 JUDGE SIPPEL: All right. Well, I'll ask this
10 witness, and I, I, I may even ask other witnesses as they come
11 in, but are you in a position to answer that question, as to
12 whether or not -- You know the period that I'm talking about,
13 from, from, from May until September 1991?

14 THE WITNESS: Um-hum.

15 JUDGE SIPPEL: Do any documents exist in the files
16 of Scripps Howard or of the station itself that are adverse
17 letters from the FCC?

18 THE WITNESS: There are none that I know of.

19 JUDGE SIPPEL: There are none that you know of. If
20 there were any there, would you know of them?

21 THE WITNESS: I would know of them.

22 JUDGE SIPPEL: Anything more on that, Ms.
23 Schmeltzer?

24 MS. SCHMELTZER: No.

25 JUDGE SIPPEL: Now, that's it. You're back to cross

1 examination.

2 MS. SCHMELTZER: Thank you.

3 BY MS. SCHMELTZER:

4 Q Ms. Barr, just before we broke, you mentioned that
5 the program "Turn It Up" was produced by a station employee?

6 A Yes.

7 Q Was that program a limited run program?

8 A Yes, 13 weeks.

9 Q Thirteen weeks?

10 A Um-hum.

11 Q Okay. And was it a news photographer at the station
12 that produced that program?

13 A Yes. His name is Pete O'Neal.

14 Q Was he acting as an independent contractor at the
15 time?

16 A Yes, he was.

17 Q The program "Lift Every Voice," has that program
18 been discontinued?

19 A No, it has not.

20 Q Did Scripps, did Scripps Howard have a policy in
21 1991 against paid religious programming?

22 A Against paid religious programming? Yes, it did.

23 Q Was it determined that "Lift Every Voice" was a paid
24 religious program?

25 A No, it was not determined that, that it was.

1 Q But that program was not discontinued?

2 A No, it was not.

3 Q Ms. Barr, did you compile any financial data about
4 the morning news expansion and the ordering of equipment in
5 connection with preparing for this hearing?

6 A I --

7 MR. HOWARD: Objection, Your Honor. What's the
8 relevance of, of, of this question, this line of inquiry? Is
9 it in --

10 MS. SCHMELTZER: Well, there are attachments on
11 this.

12 MR. HOWARD: I thought that the judge had ruled that
13 if you were going to refer to attachments that instead of
14 testing the witness, you just --

15 MS. SCHMELTZER: Well, I will, but --

16 JUDGE SIPPEL: Well, wait a minute. Don't start
17 talking to one another. You have an objection?

18 MR. HOWARD: Yes, Your Honor, objection in that she
19 is again testing the witness's memory about this. There's,
20 there's material in the testimony about this and she's
21 starting off her line of inquiry by inquiries as to whether it
22 exists instead of just pointing to where the material is in
23 the testimony so the witness can --

24 JUDGE SIPPEL: Well, yes, I, I think she -- When it
25 gets down to a specific question, she will, she will do that,

1 or I will instruct her to do that. But I think she's just
2 asking the -- she's just transitioning into a different
3 subject matter, and perhaps the witness can address the
4 general questions before she gets to the specifics. I'm going
5 to overrule the objection. Go ahead, Ms. Schmeltzer.

6 BY MS. SCHMELTZER:

7 Q In connection with preparing your direct case
8 exhibit, did you gather together any financial information
9 that pertained to the expansion of the morning news
10 programming and the ordering of equipment for the station?

11 A I, I gathered together memos, internal documents,
12 and some of those did include financial information with
13 respect to the morning show.

14 Q Okay. And let me turn your attention first to
15 Attachment E to your exhibit.

16 A Okay.

17 Q And I'd specifically like to turn your attention to
18 page SH3-0197 and the following pages. Did you have any
19 participation in preparing these materials?

20 A In the actual preparation of this particular
21 document? No.

22 Q It was prepared, I take it, in September of '91. So
23 you were not involved in the preparation of that document?

24 A In the actual preparation of this document, no, I
25 was not.